

CUSTOMER NO.
34456**REMARKS**

In an Office Action mailed July 28, 2005, claims 1-4, 6-9, 11-17, 19, 21-27 and 29 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 6,341,160 ("Tverskoy"), and claims 5, 10, 18, 20, and 28 were rejected under 35 U.S.C. § 103(a) over Tverskoy in view of U.S. Patent Publication No. 2004/0072544 ("Alexis"). Applicants respectfully request reconsideration of the rejections in light of the amendments to the claims and the accompanying remarks.

At page 8, the Office Action acknowledges that Tverskoy fails to disclose or suggest that the incoming call comprises a Voice over Internet Protocol call. *See Office Action*, p. 8, paragraph 6. With this amendment, independent claims 1, 11, 20, and 21 and 29 are amended to recite that the incoming telephone call comprises a Voice over Internet Protocol call. With this amendment, the rejection of claims 1-4, 6-9, 11-17, 19, 21-27 and 29 is overcome and should be withdrawn.

Applicants respectfully traverse the rejection of claims 5, 10, 18, 20 and 28 under 35 U.S.C. § 103(a) over Tverskoy and Alexis. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *M.P.E.P.* §2143. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The cited references fail to provide a motivation for making the asserted combination. Tverskoy is directed to an answering machine for transmitting messages to a remotely accessible user account. *See Tverskoy*, Abstract. By contrast, Alexis is directed to a communication device for hosting land-line, wireless and Internet telephone calls. *See Alexis*, Abstract. While Alexis describes instant messaging between various devices (*see Alexis*, p. 15, paragraph 0166), the instant messaging is in the context of real-time messaging between users, as compared to

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voicemail messages. *See Alexis*, p. 15, paragraph 0166. In particular, Alexis discloses a device that supports switching between half-duplex voice instant messaging and text instant messaging. *See Alexis*, p. 15, paragraph 0165. Such text messaging requires installation of a plug-in or add-on for the instant-messaging client, which must be turned on. *See Alexis*, p. 15, paragraphs 0167-0170.

In view of the real-time voice communication and instant messaging scheme of Alexis, an artisan skilled in the art would not be motivated to look to Alexis to modify the answering machine of Tverskoy. Rather, such a combination would destroy the time-shifting functionality of Tverskoy. In particular, the real-time forwarding of instant messages to the user via the communication device of Alexis requires both users to be available at the time of the transmission. By contrast, Tverskoy records and sends the voicemail to the user, precisely because the user is not available to answer a call at that moment. Thus, the cited references fail to provide a suggestion or motivation to make the asserted combination. Further, the cited references do not contain a teaching to make the asserted combination. Therefore, the asserted combination of the real-time system of Alexis with the answering machine of Tverskoy is an impermissible hindsight reconstruction based only on the present application. Accordingly, the Examiner has failed to meet his burden or to provide any basis to support a prima facie case of obviousness, and the rejection of claims 1-4, 6-19, and 21-30 over Tverskoy and Alexis should be withdrawn.

CONCLUSION

Applicants have pointed out specific features of the claims not disclosed, suggested or rendered obvious by the references applied in the Official Action. Accordingly, Applicants respectfully request reconsideration and withdrawal of each of the objections and rejections, as well as an indication of the allowability of each of the claims now pending.

Any changes to the claims in this amendment, which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

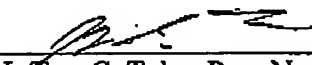
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The Examiner is invited to contact the undersigned attorney at the telephone number listed below if such a call would in any way facilitate allowance of this application.

The Commissioner is hereby authorized to charge any fees, which may be required, or credit any overpayment, to Deposit Account Number 50-2469.

Respectfully submitted,

10-19-2005
Date


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